Supreme Court of the United States.

No. 21.—October Term, 1905.

The Attorney General of the State of Michigan Upon the Relation of L. E. Kies et al., Plaintiff in Error, vs. Thomas J. Lowrey, H. S. Walworth, C. H. Manzer et al.	In error to the Supreme Court of the State of Michigan.

[November 13, 1905.]

Mr. Justice McKenna delivered the opinion of the Court.

The constitution of the State of Michigan requires the legislature to establish and provide a system of public schools, whereby a school shall be kept open at least three months in each year in every school district in the State. In fulfillment of this requirement legislation was enacted from time to time providing for the formation of school districts. Under this legislation (1881) four school districts were organized in the townships of Somerset and Moscow, county of Hillsdale. In 1901 the legislature passed an act known as "Act Number 315 of the Local Acts of the State of Michigan for the Year 1901," entitled "An act to incorporate the public schools of the village of Jerome, Hillsdale County, Michigan; define the boundaries thereof, provide for the election of trustees and fix their powers and duties, and provide for the distribution of the territory of the disorganized districts." By this act one of the districts formed in the townships of Somerset and Moscow, in which the village of Jerome is situated, and portions of other districts, was set off and incorporated in one school district, to be known as "the public schools of the village of Jerome." The act appointed defendants in error trustees of the new district, to continue in office until their successors should be elected, as provided in the act. The act gave to the new district the property within its limits which had belonged to the districts from which it was created, and required the new district to assume and pay the debts and obligations of the old districts. The new district did not include all of the lands of the old districts.

On the 7th of October, 1901, an information was filed in the nature of a *quo warranto* by the attorney general of the State upon the relation of L. E. Kies, W. E. Alley, J. B. Strong and Stephen McCleary, charging defendants in error with usurping, intruding into and unlawfully claiming

to exercise "a false, fictitious and pretended public office, to wit, trustees and officers of the pretended school district known as 'The public schools of the village of Jerome,' and *ex officio* 'The board of school inspectors of the public schools of the village of Jerome,' to wit, at the county of Hillsdale aforesaid, in contempt of the people of the State of Michigan, and to their great damage and prejudice."

The Circuit Court rendered a judgment of ouster against defendants in error. The Supreme Court entered the following judgment: "The judgment of ouster should be affirmed as to such officers as now hold under the legislative appointment, if there be any thus holding. As to others, if any, it will be reversed."

The grounds of attack upon the validity of the act creating the new district in the Supreme Court of the State were as follows:

First. It deprives this school district or municipality of the right of local self-government, guaranteed to all municipalities by the Constitution.

Second. The title to the act indicates and the act itself embraces more than one object.

Third. The act is broader than the title; the body of the act embraces many objects not covered by the title.

Fourth. The act as passed impairs the obligation of contracts, within the meaning of the Constitution of the United States and the Constitution of the State of Michigan.

With the first three grounds we have no concern. They present strictly local questions. We are concerned with the fourth ground only in so far as it invokes the Constitution of the United States. The Supreme Court disposed of this ground as follows: "We have already shown that the obligation of contracts is not impaired. The districts did not hold this property under any contract with the State, but as a public agency." In other words, the non-existence of a contract was rested on the construction of the Constitution and laws of the State, and hence defendant in error contends that the decision of the court did not involve a Federal question. This, however, overlooks the power and duty of this court to determine for itself the existence or non-existence of a contract. Other grounds in support of the motion to dismiss are urged which, we think, are also untenable. The motion is therefore denied.

Plaintiff in error broadened in this court his objections to the act, based on the Constitution of the United States. He urges, besides, the contract clause of the Constitution, that provision of the Fourteenth Amendment which protects private property from deprivation without due process of law, and section 4, article IV, which provides "The United States shall guarantee to every State in the Union a republican form of government." But the grounds all depend ultimately upon the same arguments. If the legislature of the State has the power to create and

alter school districts and divide and apportion the property of such district no contract can arise, no property of a district can be said to be taken, and the action of the legislature is compatible with a republican form of government even if it be admitted that section 4, article IV, of the Constitution applies to the creation of, or the powers or rights of property of, the subordinate municipalities of a State. We may omit, therefore, that section and article from further consideration. The decision of the other grounds urged we may rest upon the opinion of the Supreme Court of the State and the case of *Lamarie County* v. *Albany County et al.*, (92 U. S. 307.) It is there said in many ways, with citation of many supporting cases, that the legislature of a State has absolute power to make and change subordinate municipalities. The following quotation meets exactly the contentions of plaintiff in error:

"Institutions of the kind, whether called counties or towns, are the auxiliaries of the State in the important business of municipal rule, and cannot have the least pretension to sustain their privileges or their existence upon anything like a contract between them and the legislature of the State, because there is not, and cannot be, any reciprocity of stipulation, and their objects and duties are utterly incompatible with everything of the nature of compact. Instead of that, the constant practice is to divide large counties and towns, and to consolidate small ones, to meet the wishes of the residents, or to promote the public interests as understood by those who control the action of the legislature. Opposition is sometimes manifested, but it is everywhere acknowledged that the legislature possesses the power to divide counties and towns at their pleasure and to apportion the common property and the common burdens in such manner as to them may seem reasonable and equitable." Many cases are cited. See also *Worcester & Worcester Street Railway Co.*, (196 U. S. 539.)

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.